

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

UNITED STATES OF AMERICA,

Plaintiff,

v.

PABLO CASTRON MARRON,

Defendant.

CR. NO. 2:95-235-03 WBS

MEMORANDUM AND ORDER RE: MOTION
TO REDUCE SENTENCE PURSUANT TO
18 U.S.C. § 3582 (c) (2)

-----oo0oo-----

Before the court is defendant Pablo Castro Marron's
Amended Motion to Reduce Sentence Pursuant to 18 U.S.C. §
3582 (c) (2). (Docket No. 352.)

I. Factual and Procedural History

On June 11, 2012, defendant pled guilty pursuant to a
plea agreement to one count of conspiracy to manufacture
methamphetamine in violation of 21 U.S.C. §§ 846 and 841 (a) (1).
(Sentencing Tr. (Docket No. 351); Plea Agreement (Docket No.
336.)) In the plea agreement, the parties agreed to a 120-month

1 sentence and agreed that defendant's offense carried a 10-year
2 mandatory minimum sentence.¹ The parties also agreed to the
3 Factual Basis attached to the plea agreement, which stated, among
4 other things, that defendant intended to manufacture more than
5 100 grams of actual methamphetamine or more than one kilogram of
6 a mixture containing methamphetamine. (Plea Agreement Ex. A.)

7 Under the then-existing Sentencing Guidelines, the
8 Presentence Report determined that the base offense level was 32
9 for an offense involving at least 50 grams but less than 150
10 grams of actual methamphetamine. Subtracting three levels for
11 acceptance of responsibility and timely notification of his
12 intent to plead guilty, defendant's total offense level was 29.
13 Defendant also had three criminal history points due to a
14 disorderly conduct conviction and his commission of the instant
15 offense while on probation, resulting in a criminal history
16 category of II. The PSR suggested that this category overstated
17 defendant's criminal history but recommended no downward
18 departure because the low end of the Guidelines range was the
19 mandatory minimum sentence. Based on the total offense level,
20 the criminal history category, and the statutory minimum
21 sentence, defendant's Guidelines range sentence was 120 to 121
22 months, though the parties later agreed that absent the mandatory
23 minimum sentence, the Guidelines range would have been 97 to 121
24 months. (PSR 9-12, 15; Sentencing Tr. 4-5.)

25 Judge Edward J. Garcia held a sentencing hearing on
26 October 26, 2012. At the hearing, Judge Garcia expressed his

27 ¹ See 21 U.S.C. § 841(b)(1)(A)(viii).
28

1 concern that if defendant had received a criminal history
2 category of I and had been debriefed, he would have been eligible
3 for a "safety valve" exception to the mandatory minimum
4 sentence.² However, Judge Garcia noted that defendant had not in
5 fact been debriefed, and the government argued that debriefing
6 was not an issue because (1) the defendant had never requested to
7 be debriefed, and (2) the parties had agreed to the ten-year
8 mandatory minimum sentence in the plea agreement, though the
9 government could have sought a longer sentence due to defendant's
10 alleged obstruction of justice based on his lengthy fugitive
11 status after being charged. (Sentencing Tr. 6-9.)

12 Judge Garcia then explained that he was willing to put
13 over sentencing should defendant wish to be debriefed. In
14 response, the government explained that it would not agree to a
15 lower sentence and would potentially withdraw from the plea
16 agreement if defendant was allowed to be debriefed. The
17 defendant ultimately decided that it would be better to move
18 forward with the plea agreement than go to trial or plead guilty
19 without the plea agreement. Judge Garcia then accepted the plea
20 agreement and imposed a 120-month sentence. (Sentencing Tr. 10-
21 13.)

22 II. Discussion

23 Defendant now moves to reduce his sentence based on
24 Amendment 782 to the United States Sentencing Guidelines
25 ("U.S.S.G."). The crux of his argument is that his Guidelines
26 range was lowered by Amendment 782 to 78-97 months, and that the
27

28 ² See U.S.S.G. § 5C1.2(a)(5).

1 mandatory minimum sentence of ten years does not apply because
2 Judge Garcia "effectively determined" that he was eligible for
3 the safety valve exception to the mandatory minimum sentence.

4 Amendment 782 retroactively modifies the Drug Quantity
5 Table in § 2D1.1 and reduces by two points the base offense level
6 for most federal drug offenses. See U.S.S.G. supp. to app. C,
7 amend. 782. Section 3582(c)(2) provides that, when a defendant
8 is sentenced "based on a sentencing range that has subsequently
9 been lowered by the Sentencing Commission . . . the court may
10 reduce the term of imprisonment . . . if such a reduction is
11 consistent with applicable policy statements issued by the
12 Sentencing Commission." 18 U.S.C. § 3582(c)(2). To grant a
13 motion under 18 U.S.C. § 3582(c)(2), the court must determine
14 that a reduction is consistent with the policy statement
15 promulgated in § 1B1.10. Dillon v. United States, 560 U.S. 817,
16 826-27 (2010). Section 1B1.10 provides that a reduction in the
17 defendant's term of imprisonment is authorized under 18 U.S.C.
18 § 3582(c)(2) only if "the guideline range applicable to that
19 defendant has subsequently been lowered as a result of an
20 amendment to the Guidelines Manual." U.S.S.G. § 1B1.10(a).
21 Moreover, "[a] retroactive amendment to the Guidelines cannot
22 reduce a sentence below the statutory minimum term." United
23 States v. Sykes, 658 F.3d 1140, 1146 (9th Cir. 2011) (citations
24 omitted).

25 As an initial matter, the court rejects defendant's
26 contention that Judge Garcia "effectively determined" that
27 defendant was eligible for safety valve relief from the mandatory
28 minimum sentence. Rather, Judge Garcia merely explained that if

1 he determined that a Criminal History Category of I applied and
2 "if [defendant] had complied with the debriefing requirement,"
3 defendant "would become eligible for a safety valve
4 consideration." (Sentencing Tr. 7.) However, defendant did not
5 debrief before sentencing, and he declined Judge Garcia's
6 invitation to put over sentencing to allow him to do so, despite
7 Judge Garcia's comments regarding the benefit of debriefing.
8 Instead, he choose to move forward with sentencing pursuant to
9 the plea agreement, based on the determination that it would be
10 better to proceed under the plea agreement than risk the
11 government's withdrawal from the agreement. (Sentencing Tr. 11-
12 12.) Thus, defendant was and is not eligible for safety valve
13 relief from the mandatory minimum sentence.

14 Whether defendant's 120 month sentence was based on the
15 Guidelines range, the mandatory minimum, or the parties' plea
16 agreement, it is undisputed that defendant's purported amended
17 Guidelines range of 78-97 months is below the ten-year statutory
18 mandatory minimum. "It is axiomatic that a statutory minimum
19 sentence is mandatory" and, as discussed above, "[a] retroactive
20 amendment to the Guidelines cannot reduce a sentence below the
21 statutory minimum term." Sykes, 658 F.3d at 1146; see also
22 United States v. Mullanix, 99 F.3d 323, 324 (9th Cir. 1996)
23 (holding that the mandatory minimum "was not affected by the
24 change in the [drug] equivalency tables" and, thus, "the district
25 court had no authority to reduce [the defendant's] sentence under
26 § 3582(c)(2)"). Here, because the statutory mandatory minimum
27 sentence applies, the court may not reduce defendant's sentence
28 below that minimum of 120 months which defendant already

1 received. Accordingly, the court lacks jurisdiction to grant the
2 requested sentence reduction and must deny defendant's motion.

3 IT IS THEREFORE ORDERED that defendant's motion to
4 reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) (Docket
5 No. 352), be, and the same hereby is, DENIED.

6 Dated: November 17, 2017

7 

8 **WILLIAM B. SHUBB**

9 **UNITED STATES DISTRICT JUDGE**
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28